IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1803 OF 2005

The Commissioner of Income Tax. .. Petitioner
v/s.
1. Income Tax Settlement Commission
& anr. .. .. Respondents

Mr.Ashok Kontangale for petitioner.
Mr.Firoz Andhyarjuna, Sr.Advocate i/by Doijode & Associates for respondent No.2.

CORAM : H.L. GOKHALE &
J.P. DEVADHAR, JJ.

DATED : 29th November 2005

P.C. :

1. Heard Mr.Kontangale in support of this Petition. Rule. Rule is made returnable forthwith. Mr.Andhyarjuna appearing for respondent No.2 waives service. Both Counsel are heard.

2. The grievance made in this Petition is that whereas the Original Application filed before the 1st respondent - Settlement Commission under Section 245C of the Income Tax Act was for Rs.1.7 Crores, it was subsequently revised almost to Rs.2.50 Crores. It is, therefore, submitted that it cannot be said to be a full and true disclosure within the meaning of sub-section (1) of Section 245C of the Income Tax Act. It is, therefore, submitted that the order of admission of the

Application was erroneous and the Settlement Commission should have rejected the Application at the threshold.

3. Mr.Andhyarjuna, learned Counsel appearing for respondent No.2, on the other hand, submits that it is at a stage before admission of the Application and such a correction should be permissible to the assessee. He further submits that the credit balances were treated as income for the block period and the said amounts have not been disclosed to the Income Tax Authorities earlier. It is on this footing that the correction had been done.

4. We do not propose to go into this issue for the simple reason that the order passed by the Settlement Commission is not self-explanatory. We are of the view that it would be better that the Application of respondent No.2 be considered by the Settlement Commission afresh for admission and take a decision after giving full opportunity to both the parties as to whether the disclosure of Rs.2,50,00,000/- made in the Application and before the Settlement Commission at the time of hearing constitutes full and true disclosure within the meaning of Section 245C of the Income

Tax Act.

5. In the circumstances, we set aside the impugned order dated 12th July 2004 and restore the matter to the Settlement Commission once again. We make it clear that in the meanwhile no fresh demand will be made on the basis of the assessment under consideration nor any further steps for recovery will be taken so long as the Application is pending for consideration of admission.

6. Rule is made absolute as above.

(H.L. GOKHALE, J.)

(J.P. DEVADHAR, J.)